

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>6/26/2018</u>

-against-

18-cr-0243 (LAK)

ANDREEA DUMITRU, etc.,

Defendant.
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MEMORANDUM AND ORDER

LEWIS A. KAPLAN, *District Judge*.

Defendant moves to dismiss Count Two of the indictment on the ground that it allegedly is multiplicitous and for a bill of particulars.

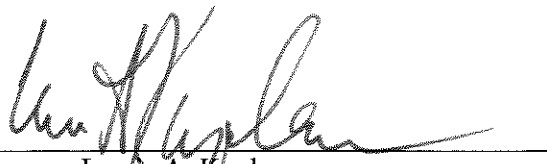
1. The motion to dismiss at best is premature in light of *United States v. Josephberg*, 459 F.3d 350, 355 (2d Cir. 2006). And while defendant correctly notes that Fed. R. Crim. P. 12(b)(3) requires that a defendant who contends that an indictment is multiplicitous to move for dismissal before trial, failing which any such contention is waived, nothing in the rule requires that the Court decide such motion to dismiss at this stage. *Josephberg* is inconsistent with any such view. Moreover, the defendant may take no comfort in the fact that the government, given the Circuit's controlling view that the question of multiplicitousness is properly considered only at a later point in the proceedings, thus has not taken a position on whether the elements of the two charged counts are the same. Indeed, the Court has some skepticism with respect to defendant's contention that the elements of the crimes charged in the two counts are identical although it does not decide the point at this juncture. It notes, for example, that conviction under 18 U.S.C. § 1001, the basis for Count Two, requires proof that the statements and representations have been made not only knowingly, but also willfully, whereas 18 U.S.C. § 1546(a), the basis for Count One, does not require proof of willfulness.

2. The Court declines to require a bill of particulars, substantially for the reasons set forth in the government's memorandum of law. DI 17, at 4, 7-9.

Accordingly, defendant's motion [DI 16] is denied in all respects.

SO ORDERED.

Dated: June 26, 2018



Lewis A. Kaplan
United States District Judge